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Administration Releases New Guidance on HRAs and Section 1332 Waivers

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Earlier this week, federal agencies released a proposed rule for Health Reimbursement Arrangements (HRAs) and updated guidance for Section 1332 State Innovation Waivers (now called State Relief and Empowerment Waivers). The Administration had indicated these changes are part of its ongoing efforts to increase choice and flexibility in the insurance market.

Proposed rule would allow HRAs to be used with individual coverage

On Oct. 23, 2018, the Departments of Treasury, Labor, and Health and Human Services (HHS) issued proposed rules that would allow employees to use the dollars in employer-funded Health Reimbursement Arrangements (HRAs, also called Health Reimbursement Accounts) to purchase individual coverage both on and off the public Marketplace (or Exchange). These proposed rules were released in response to the Oct. 2017 Executive Order, in which the Administration directed the tri-agencies to consider ways to expand the flexibility of HRAs.

Currently, employer-funded HRAs are used exclusively with employer-sponsored coverage to reimburse employees for health care expenses not reimbursed under their base medical plan (e.g., deductibles or coinsurance). Under the proposed rule:

- Employees would be able to use HRA funds to pay the premium for individual insurance coverage purchased either on or off the public Marketplace.
- Employers would be required to make the HRA available to entire “classes” of employees (e.g., full-time, part-time, or seasonal workers).
- Employers could offer *either* a group health plan or an HRA that could be used to purchase individual coverage, but not both.
    - If an employer offers the HRA, employees would be able to opt out if they are eligible for premium tax credits on the public Marketplace.

In addition to offering HRAs that could be used to pay for individual coverage, the proposed rule would also allow employers that offer traditional group health coverage to offer HRAs of up to $1,800 per year to reimburse employees for certain medical expenses, including stand-alone dental or vision benefits or premiums for Short-Term Limited Duration Insurance (STLDI), which is short-term individual insurance that doesn’t have to comply with all Affordable Care Act (ACA) rules.

Tax treatment of HRAs would remain unchanged and the offering of an HRA for individual coverage would satisfy the employer mandate if it is considered "affordable." The Treasury Department and Internal Revenue Service (IRS) are expected to release guidance in the near future on the employer mandate affordability test and potential safe harbors.

The proposed rule can be read in detail here. The tri-agencies are requesting comments by Dec. 28, 2018.

Updated Section 1332 guidance increases state flexibility

On Oct. 22, 2018, the Centers for Medicare & Medicaid Services (CMS) issued updated guidance on Section 1332 waivers, which replaces guidance published in 2015. Under the ACA, states can apply to waive key ACA provisions in order to implement innovative, alternate health coverage rules or programs while retaining basic consumer protections. The five-year waivers were available beginning in 2017 and to date, eight states have received waivers.

The new guidance makes changes to the principles that CMS will use when reviewing and approving applications. While the original "guardrails" of ensuring comprehensiveness, affordability, scope of coverage, and deficit neutrality remain in place, CMS will interpret some of them differently to loosen restrictions. For example:

- 2015 guidance: Focused on the number of individuals *estimated to receive* comprehensive and affordable coverage
- 2018 guidance: Focuses on the *availability* of comprehensive and affordable coverage

Beyond the basic guardrails, CMS has identified five new principles that future waiver requests should aim to achieve:

- Provide increased access to affordable private health plan coverage (including Association Health Plans and STLDI)
- Limit cost increases for consumers and the federal government
- Foster state innovation
- Support and empower those in need
- Promote consumer-driven health care

Changes were also made to streamline the state waiver application process. This guidance is effective for waivers submitted after Oct. 24, 2018, and has a 60-day comment period. Review the complete guidance or fact sheet for more information.

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